

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STEPHANIE ROSENFELD,

Plaintiff,

v.

TARA LENICH,

Defendant.

* * * * *

* Case No. 17-CV-7299 (NGG)

*

*

*

*

*

*

*

*

*

*

*

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE PEGGY KUO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

SAMUEL SHAPIRO, ESQ.
Emery Celli Brinckerhoff &
Abady LLP
600 Fifth Avenue
New York, NY 10020

For the Defendant,
Tara Lenich:

ERIC M. CREIZMAN, ESQ.
Creizman PLLC
747 Third Avenue
Suite 200
New York, NY 10017

For the Defendant,
City of New York:

ASHLEY REBECCA GARMAN, ESQ.
New York City Law Department
100 Church Street
New York, NY 10007

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

Fiore Reporting and Transcription Service, Inc.
4 Research Drive, Suite 402
Shelton, Connecticut 06484 (203)929-9992

1 (Proceedings commenced at 2:05 p.m.)

2 THE COURT: Good afternoon. This is Judge Kuo. Can
3 you please state your names for the record.

4 MR. SHAPIRO: Sam Shapiro and Richard Emery, Emery
5 Celli Brinckerhoff & Abady, on behalf of the plaintiff.

6 MS. GARMAN: Good afternoon, Your Honor. Assistant
7 Corporation Counsel Ashley Garman for the City defendants.

8 MR. CREIZMAN: Good afternoon, Your Honor. Eric
9 Creizman on behalf of defendant, Tara Lenich.

10 THE COURT: All right.

11 So we have scheduled this call to discuss the
12 proposed order, which I think the last document that I have is
13 document 45-1. There's nothing more recent than that, right?

14 MR. SHAPIRO: I believe that's correct, Your Honor.

15 MS. GARMAN: Yes, Your Honor.

16 THE COURT: So this document --

17 MR. CREIZMAN: This is the document -- excuse me,
18 Your Honor. I'm sorry. I think there's a document entered
19 document no. 48. It's a letter by plaintiff's counsel.

20 THE COURT: I know it's a letter, but did you attach
21 a new copy -- version of the order?

22 MR. SHAPIRO: We did not, Your Honor.

23 THE COURT: All right. That was my question, which
24 was --

25 MR. CREIZMAN: Oh, I'm sorry.

1 THE COURT: -- which text are we looking at?

2 MR. CREIZMAN: Okay.

3 THE COURT: So it's 45 and I've read the things that
4 you filed afterwards. My understanding is that document 45,
5 the document that was filed at 45 now lists five individuals
6 who are supposed to have access to the communications; two in
7 the DA's office and three in the corp counsel's office.

8 My understanding is that the objection is that in
9 the first instance none of those people should be looking at
10 the content. They should only be looking at the number and
11 the scope of that communications, as we had discussed in our
12 last conference, for purposes of identifying what is the body
13 of stuff that we're looking at.

14 Is that right, Mr. Shapiro?

15 MR. SHAPIRO: That's correct, Your Honor. That is
16 our principal dispute.

17 The other issue that we raised, and I have spoken to
18 Ms. Garman about this. I think we have more of an agreement on
19 this issue, although we may not be completely there.

20 The other issue is just we were requesting a
21 provision in the order that just confirms that these
22 authorized individuals, as that term is used in the order, are
23 not permitted to disclose the information to anyone else.

24 Ms. Garman raised when we spoke that they will have
25 to disclose to the court and potentially to other counsel, and

1 we don't dispute that.

2 And so perhaps the language that we initially
3 suggested was slightly too restrictive and we'd be willing to
4 agree to something that allows for disclosure to the court, as
5 necessary.

6 But we just want to make it clear in this order that
7 these five individuals are not permitted to go talk about what
8 they've looked at with other people in their office.

9 THE COURT: Okay. So, Ms. Garman, as to the first -
10 - to that point.

11 MS. GARMAN: As to the point Mr. Shapiro was just
12 mentioning about not being able to talk to other individuals
13 in our office?

14 THE COURT: Yes.

15 MS. GARMAN: Your Honor, we believe that that is
16 still too broad. Certainly -- you know, we've listed the five
17 individuals in the order with respect to who's able to
18 actually view the materials in the file, including the
19 communications.

20 But certainly -- I mean, we answer to supervisors
21 here with whom we may have to generally talk about certain
22 characteristics -- again, not about the specific content of
23 any conversation, but we may need to discuss about in terms of
24 -- and our own IT people, if we need to do some sort of
25 subsequent production and work with our IT people here to talk

1 about what is feasible in terms of actually packaging the
2 stuff and producing.

3 It's just not feasible that we would be able to --
4 we would be prohibited from talking to supervisors and
5 technical people in our office about, again, sort of more
6 logistical things but it still relates to the contents of the
7 file.

8 And we need a little bit of a leeway in order to
9 comply with Your Honor's order, which we are trying to do. So
10 that's our concern there.

11 And the way it was proposed, again, it was entirely
12 too broad and it would prohibit us from even, you know,
13 submitting the letter, which Your Honor has indicated is to be
14 filed on the public docket anyway.

15 THE COURT: Well, okay. So it seems that there is a
16 -- there are two different things we're talking about; one is
17 content and let's say that the fear there is that there is
18 personal content, all right. And then there is sort of
19 everything else that needs to happen in order to deal with
20 this case that the plaintiff has brought in a court of law,
21 okay?

22 So it seems that everybody dealing with this case
23 needs to be able to figure out -- needs to be able to handle
24 this package of communications, but handle it in a way that
25 doesn't cause embarrassment or pain to the plaintiff.

1 So tell me, Ms. Garman, what you know about how this
2 set of communications needs to be handled.

3 So when you were in court last, you really knew
4 nothing about it, other than that it exists and it was put in
5 a vault, let's say.

6 So now do you have more information about how it's
7 being stored, how it's going to be handled. Tell me what that
8 process looks like so that I can draw some lines and give you
9 some guidance as to how it should be handled.

10 MS. GARMAN: Sure. I mean -- I mean, just to be
11 clear, we have not been able to access the file because we
12 have not had the court order and, you know, just given some of
13 the allegations in this case are alleging that the DA's office
14 violated federal law by complying with federal law enforcement
15 agencies regarding these communications. The concern is very
16 real --

17 THE COURT: Yeah, I know, but that's why --

18 MS. GARMAN: -- so --

19 THE COURT: Yes, Ms. Garman, so I hear you on that
20 and I know because of the way the plaintiff's counsel has been
21 framing this case, nobody wants to touch anything, all right?

22 But we've got to move forward and I guess what do
23 you know about the communications? Are they stored in a pdf
24 file? Is it a thumb drive? Is it -- what is it?

25 MS. GARMAN: So -- and I believe -- the answer is I

1 don't have much more information than I had at the conference,
2 because we've been unable to access the file. But this is
3 what I do know.

4 There's basically two sort of separate ways this
5 information is stored. Primarily it is on the Kings County
6 DA's Office's hard drive in I guess -- in a database.

7 I understand from speaking with the tech folks at
8 the DA's office that that database can be searched for the
9 information -- at least some of the information that Your
10 Honor is asking us to provide, such as there can be a query
11 for what telephone numbers were involved. There can be a
12 query for what telephone numbers were involved in the oral
13 communications and dates and such.

14 There can be a query as to what telephone numbers
15 were involved in the text messages and, again, dates and
16 perhaps times. I'm not sure how specific it is.

17 So that information is basically in a database that
18 is searchable without reviewing contents of anything. That is
19 one manner in which my understanding is things are stored.

20 The other manner, which I know even less about, is
21 that certain information -- you know, the DA's office did an
22 investigation and so I would imagine, you know, there are
23 notes of people doing the investigation of their investigation
24 for that type of material, as well as there was a grand jury
25 subpoena served by the Department of Justice on the D.A.'s

1 office. The D.A.'s office complied with the grand jury
2 subpoena and I believe kept a copy of what they produced to
3 the Department of Justice.

4 All of that stuff is kept independently of the hard
5 drive.

6 THE COURT: And where are those kept?

7 MS. GARMAN: So I don't know . I believe -- my
8 understanding, from speaking with the client is that whatever
9 was produced to the D.A.'s office -- I'm sorry. To the U.S.
10 Attorney's Office was produced on disks.

11 In any event, it appears it was electronic. If it
12 was a disk or a thumb drive I'm not sure. And those are kept
13 elsewhere in, you know, files that no one is touching or
14 looking into without a court order. So I can't be more
15 specific unfortunately.

16 So -- but that's -- I hope that that answers Your
17 Honor's question as much as I can.

18 THE COURT: Yeah. So that is with regard to what
19 was given to DOJ, but you said there were notes of the
20 investigation. Is that --

21 MS. GARMAN: I believe that it is -- I believe that
22 it is broader than what was given to DOJ and was also
23 encompassing such as notes, you know, probably -- you know,
24 the D.A.'s Office initially was prosecuting Ms. Lenich before
25 it went over to the DOJ.

1 So, you know, the court records, criminal
2 complaints, that type of stuff I believe would all be in that
3 -- what I'm going to call the hard copy file, just to
4 distinguish it from the -- what's on the server.

5 THE COURT: But that won't be copies of the
6 communications.

7 MS. GARMAN: Well, that wouldn't be, but I believe
8 that the communications were part of what was turned over to
9 the DOJ.

10 THE COURT: Yeah, I understand that, but I'm just
11 trying to separate out the tranches. I know you said that they
12 gave things to the DOJ and those are copies of the
13 communications.

14 MS. GARMAN: Yes.

15 THE COURT: But the notes of the investigations are
16 just notes of the investigations, not copies of the
17 communications, right?

18 MS. GARMAN: That's --

19 THE COURT: Or are there copies there?

20 MS. GARMAN: I don't -- I just don't know. I would
21 strongly assume that is the case.

22 THE COURT: Okay. But who did the investigation?

23 MS. GARMAN: Personnel at the Kings County D.A.'s
24 Office.

25 THE COURT: Who in particular?

1 MS. GARMAN: Some of -- my understanding is it was a
2 combination of supervisory attorneys, their investigators and
3 perhaps a handful of IT people who were involved in assisting
4 with the technological aspect.

5 THE COURT: Okay. So let's look at the universe
6 that you talk about.

7 One is the hard drive, and that is locked down,
8 right? Nobody has access to that. Is it a one file folder?

9 MS. GARMAN: I just -- it's in a database. I don't
10 know anything more than that.

11 THE COURT: Okay. So that's the first thing is that
12 you need to identify -- whoever put it there knows that it was
13 put there.

14 So whoever put it there should be able to tell you
15 where it's located without anyone having to look at it, right?
16 So like if it's in the U drive or the X drive, or the whatever
17 drive, under this name, then someone can tell you that's where
18 it is.

19 MS. GARMAN: I suppose, yes.

20 THE COURT: Okay. So that's the first thing you
21 need to do is just identify where it is so then you know who
22 the custodian is of that, right? Because then somebody needs
23 to do the queries and in order to do the queries I assume
24 they'd have to have that limited access to do the queries.

25 And then once the information -- the responses to

1 the queries come through, I don't know whether -- you know,
2 again, what that process will be to pull out the responses to
3 the queries. So that's the second part of the question; how
4 will the queries be done. Okay?

5 So that it seems like there might be a way to figure
6 out who has access now and who needs access in order to get
7 this part done and can it be done in a way that either means
8 you don't -- whoever's doing it doesn't read the content, and
9 by content I think you've specified that gave the phone
10 numbers and dates and things like that, but not the
11 communication itself of on this day I did that or, you know,
12 whatever that personal communication is.

13 So if -- so for the purpose -- what you need to do
14 is get that information and then figure out how it's going to
15 be done without actually doing it yet, and then we can figure
16 out if it can be done with a minimal contact -- contact with
17 the content. Okay?

18 So the hard drive part seems fairly straight
19 forward, because it makes sense to me.

20 The second part of it is the compliance with DOJ's
21 grand jury subpoena. Again, someone had to have done that.

22 So whether that someone has already looked at the
23 information before turning it over, or didn't look at it and
24 just turned it over because they downloaded whatever was in
25 the first thing we talked about, that part of the hard drive,

1 and copied it onto a disk or thumb drive.

2 So you need to find out who responded to that and
3 who -- and then that person can tell how both -- how it's
4 produced to DOJ and how they maintained a copy, if they
5 maintained a copy.

6 So, for example, it would be very typical that
7 someone would then create a sub file, maybe not in the same
8 drive but somewhere else that says this is what we gave to the
9 DOJ. So now suddenly there's another copy of the
10 communications and you've got to find out where that is, okay?

11 MS. GARMAN: Okay.

12 THE COURT: And then you should find out whether the
13 person who did that either looked at the content or shared it
14 with anyone.

15 Now they may have just done a peek to see what's in
16 there and if that's the case, that's fine. Just tell -- you
17 get that information or did they do a review of -- you know,
18 we don't want to turn anything over without actually reading
19 it first. Again, that would not be typical. So if someone
20 did that, we should know who did it as part of their job.
21 Okay?

22 And then -- so then we can figure out where that is
23 and if somebody ready read it, fine. They already read it.
24 But there might not be a reason for anybody at this point to
25 read it -- someone else to read it.

1 So then the other part is this investigative file.
2 Somebody created that file. Someone or some set of people, so
3 someone -- you need to get the information as to who did that
4 and where is that. And then where -- what was it in? Do they
5 -- are they literally notes of the investigation or does that
6 contain copies of communications?

7 MS. GARMAN: Yes, Your Honor. Understood.

8 As to that last point though, then what's in it,
9 again, there's no one -- the D.A.'s office is not going to go
10 into the file --

11 THE COURT: No, they're not going to but what's in
12 it, someone created it. So whoever created it can tell you.

13 MS. GARMAN: Your Honor, I'm not entirely sure. I
14 mean, I would just note a number of individuals -- it wasn't
15 one person --

16 THE COURT: Right. But someone was in charge. So
17 someone can say I put a team together. These are the five
18 people on the team. This is what they were supposed to do and
19 here's the process. Everything they did they were supposed to
20 put into the file, or one person was in charge and this is the
21 person.

22 You don't have to go -- no one now needs to go look
23 in order to know what was in it. It's not -- I mean, these
24 are all humanly created things. So someone knows what's in it
25 because that person or group of people created it, or someone

1 supervised the creation of that thing.

2 So that's what you need to find out, is this "file"
3 without you -- I mean, I know you don't know because you
4 didn't create it. So I'm not asking you to go in and look at
5 it.

6 But you need to find out whoever created it, what
7 was supposed to be in it, what is in it, without having to go
8 back and look in it to refresh their memory of what's in it,
9 right? I mean, there's a process. People will know, well, in
10 that notebook, I usually put this, or in that file, I usually
11 file this. And it doesn't require you to actually go and look
12 at it.

13 There is the possibility that you're a little bit
14 wrong because you don't remember every document or everything
15 that you put in it, which is fine, given this exercise, but to
16 say there's a box in the corner and no one knows what's in it
17 and no one wants to touch it, doesn't make any sense to me,
18 because it's not an unmarked box. It's a file of an important
19 case. So someone knows what's in it.

20 So that's the part I just need at this point,
21 because every time we talk you don't have the information.

22 MS. GARMAN: Yes, Your Honor. I certainly
23 understand.

24 I just -- as I'm sure Your Honor appreciates, this
25 was a very unique situation. You know, it's not like they're

1 -- the D.A.'s Office was doing an investigation -- you know,
2 and thus the criminal investigation is the one of its own
3 employees on a regular basis --

4 THE COURT: All the more reason they should know
5 what the process is that they followed.

6 MS. GARMAN: Yes.

7 THE COURT: That they created and followed.

8 MS. GARMAN: Yes, Your Honor. I would also just note
9 -- I mean, this did take place in 2015 and 2016. A number of
10 the individuals have left the office now. Certainly, we'll be
11 able --

12 THE COURT: So someone in the D.A.'s Office can
13 reach out to them. I mean, if this is going to be a problem,
14 Ms. Garman, because they're not giving you the information, I
15 might have to hold a hearing and have people come in and tell
16 me. I mean, it's just --

17 MS. GARMAN: Your Honor, I think what would probably
18 help -- because as was discussed I believe at the first
19 conference, the D.A.'s Office has sort of two issues.

20 We've talked already about the communications and
21 Your Honor's point that we're doing all of this without
22 accessing the content of the communications is well taken, but
23 I'll put that aside.

24 The other issue is the 160-50 issue that the whole
25 file is sealed because of -- by operation of law --

1 THE COURT: Okay, so --

2 MS. GARMAN: Your Honor, I do think that all parties
3 would agree for the portion of our proposed order that would
4 allow -- that would unseal -- the first paragraph of our
5 proposed order that would unseal the file pursuant to 160.50,
6 that would enable us to -- to the extent that people don't
7 have a recollection of -- as to what is specifically in the
8 file, that would enable us to at least, you know, open that
9 box, as Your Honor has put it, to be able to see what is in
10 there without doing any sort -- without risking any review --

11 THE COURT: But that's my problem -- but this is my
12 point. I don't understand why you need to open the box when
13 you can ask the people who created the box what's in there.

14 And by what's in there it's not -- you know, what
15 does this document say. It's just, those are the documents
16 that I used and yes, I made copies of X, Y, Z communication or
17 no, I never made any copies because those are all
18 electronically stored so it's not in that particular box.
19 That's all I'm asking.

20 I really don't think that this -- this is not like a
21 box that was unearthed that was buried in 1800, right? Like,
22 this was created specifically for a case. Everyone knew what
23 this was about. Everyone understood it was unusual, which is
24 why there had to have been care taken in how this whole thing
25 was handled. And, therefore, someone knows how it was

1 handled.

2 So just go talk to that person and if that person
3 doesn't have the information, then you know, find out who does
4 have the information. If the person's left the office, call
5 them up. I mean, just don't see what is so hard about that.
6 Okay.

7 So as to the 160.50 issue, Mr. Creizman, you were
8 going to talk to your client and see whether she is willing to
9 have this -- allow the opening of the sealed cases. Did you -
10 - did your client have a view on this?

11 MR. CREIZMAN: Yes, Your Honor, and I did speak with
12 her and she has no objection to it.

13 I think there's a form that needs a notary and -- it
14 needs to be notarized and I didn't have the notary when I went
15 with her and I didn't know how to actually get one, but I'm
16 saying that there's no objection on her part.

17 THE COURT: Okay. So there you have it, for as far
18 as your authorization, Ms. Garman.

19 MR. SHAPIRO: Your Honor, just one point on that
20 issue. We would object to a general unsealing order of a file
21 that includes these communications, which I believe is the
22 case here.

23 THE COURT: Well, I'm not saying that --

24 MR. SHAPIRO: We would object strongly to the sort
25 of piecemeal approach that Ms. Garman suggests.

1 There should be an order -- in our view, there
2 should be an order that explains quite clearly who is allowed
3 to access these. In our view, no one should be allowed to
4 access the contents and that should be spelled out before
5 things are unsealed and people start opening boxes that do
6 contain these communications.

7 THE COURT: Right. So that's why I'm trying to take
8 this in steps, right?

9 So the first -- all I'm asking at this point is to
10 get information like I stated a few minutes ago; where is the
11 stuff, how is it stored, you know, who created it? Who
12 already had access to it? What access is needed in order to
13 do the queries and to do the -- you know, the necessary work
14 in this phase of the litigation.

15 Now Ms. Garman brought up that there's this whole
16 160.50 issue, which Mr. Creizman seems to say should not be an
17 issue.

18 So I'm not saying all of this should be unsealed and
19 the box should be unsealed and the contents -- you know,
20 scattered about the room for everybody to read.

21 I'm just saying to the extent that the sealing has
22 created a problem to get the information I put out there, it
23 doesn't seem like that's a barrier if Ms. Lenich is willing to
24 allow the unsealing.

25 Now I'm not ordering that it be unsealed generally,

1 but I'm ordering that all this information I've just stated
2 should be gotten and Ms. Garman, that 160.50 issue should no
3 longer cause a problem.

4 So then let's move on and get the information,
5 right?

6 MS. GARMAN: Yes, Your Honor. Understood. I just --
7 we will certainly make every effort to obtain the information.

8 My concern is just that the various individuals
9 involved in this investigation may not recall specifically
10 what is in the file --

11 THE COURT: Well, the only thing we really need to
12 know about the file is whether they contain the
13 communications. That's the only question, because right now
14 we're just talking about the communications.

15 MS. GARMAN: Right. And it just seems to me if
16 that's the only question, if that's the question as to whether
17 or not what I term is the hard copy of the file, contains
18 copies of the communications, being able to look in the file
19 to either confirm yes or no would be -- would be exponentially
20 more efficient I think than --

21 THE COURT: But the first thing to do is just to
22 find out who created the file. If that person is still around,
23 that person can tell you, right?

24 If that person can't tell you, that person might --
25 I might allow that person to look in the file, because that

1 person already saw the file, because that person created it.

2 But I don't know. No one knows. So get the
3 information first before opening the box. That's all I'm
4 saying. Right? Who created it?

5 MS. GARMAN: Yes, Your Honor.

6 THE COURT: Whoever created it already saw it. So
7 maybe there's no harm in having that person look again. But I
8 don't know that. All right?

9 Or if the person remembers -- you know, I printed
10 out a bunch of the communications from the file, because I
11 needed it, then that's the answer. If the person said I never
12 printed it out, that's an answer. If the person says I don't
13 remember, fine.

14 But I just don't know, so get -- just start asking
15 those kinds of questions. And you raise the 160.50 issue.
16 Mr. Creizman says his client has no objection.

17 So if you need the form notarized or whatever, get
18 it done. It doesn't mean I'm going to unseal it. It just
19 means that that's no longer a barrier for you.

20 So then let's talk about what you need beyond that
21 to get the things that I've asked you to get.

22 MS. GARMAN: Your Honor, I certainly understand. I
23 apologize. I'm just a little bit confused.

24 First of all, we've provided the 160.50 release
25 months ago and my understanding was that Ms. Lenich was not

1 going to sign it. So I did not know that there was -- you
2 know, I did not know until now that that was going to be a
3 non-issue.

4 But the release unseals the file and our position
5 would be that that would allow us to open the box. It doesn't
6 allow us to listen to the communications --

7 THE COURT: It allows you to do it, but I'm not
8 going to -- but I may not allow you to, okay? So that's my
9 point. When she unseals it or she gives permission to unseal
10 it, it doesn't mean it automatically happens. That means you
11 will no longer have that as a reason not to open it.

12 But I may put an order in place, as the plaintiffs
13 are asking, so that it's a very limited release.

14 MS. GARMAN: Okay.

15 THE COURT: I still have that power to do it.

16 MR. CREIZMAN: Your Honor, if I just may add. It's
17 Eric Creizman, again, for Tara Lenich.

18 You know, in terms of the 160.50 release falls -- I
19 mean, I think that -- we're not implying that it should be
20 released in any greater capacity than what -- you know, it
21 should be narrow or --

22 THE COURT: Right.

23 MR. CREIZMAN: -- however the -- we just don't want
24 it to be a barrier --

25 THE COURT: Right.

1 MR. CREIZMAN: -- to anything.

2 THE COURT: I appreciate that.

3 MR. CREIZMAN: And that's all we're saying.

4 THE COURT: Yes, and that's how I understood it.

5 MS. GARMAN: Yes, that's how I understood it.

6 MR. CREIZMAN: Thank you.

7 THE COURT: So, Ms. Garman, so that's how it's going
8 to go. Again, we're trying to do this in a very structured
9 way. So once you have what you need so that you don't have to
10 keep saying the 160.50 is a barrier, let's talk about how to
11 make this go forward, all right?

12 So if you need to have that notarized, or whatever
13 it is you need from Mr. Creizman, please work with him so that
14 his client has given the proper permissions.

15 Once she's done that, it doesn't mean that the box
16 is opened and everything -- everybody looks at everything.
17 And that's what we're going to talk about now, all right?

18 So the first thing I've said is get that information
19 about where these things are stored, and what is likely to be
20 in it, and who created it so the people who created will --
21 just for the -- the two -- I mean, for each of these you need
22 to know who created it, right? Who created the place on the
23 hard drive and put it there? Who created the investigative
24 file and what's in there? Who complied with the DOJ grand
25 jury subpoena?

1 And those are the people who can tell you what is
2 contained in the thing they did to do their jobs. So just get
3 that part done and then, you know, like I said, who has
4 access, how's it stored, what is the scope of it and then we
5 can move forward before we get to the content, okay?

6 Ms. Garman, is that understood?

7 MS. GARMAN: Yes, Your Honor.

8 THE COURT: All right. Are there any other barriers
9 to your being able to do that?

10 (No response.)

11 THE COURT: All right. So --

12 MS. GARMAN: Not that we haven't discussed.

13 THE COURT: Right. And if you're running into
14 problems with the D.A.'s Office, either through non-compliance
15 or whatever, let me know. And I may have a hearing, if that's
16 the problem.

17 But if they can give you the information, then you
18 can convey it on the docket and then we can move forward.
19 Again, without the content. Okay. Because we want to figure
20 out how to get to the content in stages.

21 Now plaintiff has made a request to get the content.
22 I'm not going to allow that at this moment. All right?
23 Because I don't think it's a good way to proceed to keep one
24 side completely in the dark and the other to have a release of
25 all the content at this point.

1 So we're going to move forward just on this sort of
2 metadata issue to find out where things are, how they're
3 stored, how we're going to get to it before we actually look,
4 and then we can have a conversation about how we're going to
5 in an orderly way get to the content, if we get to it. All
6 right.

7 So Mr. Shapiro, was there anything else on your side
8 that we need to talk about?

9 MR. SHAPIRO: I think that's it, Your Honor. Thank
10 you very much.

11 THE COURT: Okay. And so Ms. Garman, please get
12 that information.

13 And then as far as this -- I'm just trying to look
14 at the proposed order. Is it too early then to do this order,
15 because we're not looking at the files themselves yet?
16 Because it says the following individuals will have access to
17 all the materials.

18 Ms. Garman, to what degree is this order necessary
19 under the -- for the things that I've talked about. Because
20 this looks like it's about the information --

21 MS. GARMAN: I mean, the order -- Your Honor, the
22 order we need before we look at anything. Open a box, listen
23 to any communications.

24 My understanding of Your Honor's order today is that
25 we are not to do any of those things.

1 THE COURT: Correct.

2 MS. GARMAN: So it sounds like the order -- it
3 sounds --

4 THE COURT: It's premature.

5 MS. GARMAN: Yes. It sounds like what we are being
6 asked to do is to have conversations with people.

7 THE COURT: Yeah.

8 MS. GARMAN: We're not contending that we need an
9 order to do that.

10 THE COURT: Okay.

11 MS. GARMAN: So if that is a proper understanding,
12 then we can table the proposed order.

13 THE COURT: Okay.

14 MR. SHAPIRO: And, Your Honor -- this is Sam
15 Shapiro.

16 I think we don't have a problem with that, just as
17 long as it is -- we just want to make abundantly clear that
18 they are not opening the box, to use that euphemism very
19 generally here, at the moment.

20 And we believe that there shouldn't -- the moment
21 they do open the box, there needs to be an order that limits
22 how the material can be used.

23 But as long as they're not opening the box, which is
24 what I understand Your Honor's direction is here, we agree
25 that there is no need for an order right now.

1 THE COURT: Okay. Great. So let's move forward and
2 have those conversations without opening the box, but because
3 you've had this question about what to do with the information
4 once the box is opened, then please try to iron that out so
5 that I can revise the order accordingly.

6 Let me ask Mr. Shapiro, the five people listed, do
7 you have any objection to those five people?

8 MR. SHAPIRO: We don't, Your Honor.

9 THE COURT: Okay. So that's good. So to the
10 remaining point about the further disclosures, and what is
11 necessary to get the job done, can you please craft some
12 language in advance of opening the box so that they can allow
13 IT people to access more broadly? Or maybe you can have some
14 specific language about shall not read the content, versus
15 shall not handle or have access, or something like that, okay?

16 Because, again, we need to keep clear the handling
17 versus the reading of the content.

18 So if you can craft language on that to make a
19 revised order so when the time comes to open the box, we'll be
20 in a good position in terms of what the agreement is, okay?

21 MR. SHAPIRO: Understood, Your Honor. We'll do that
22 and we'll speak to Ms. Garman about that.

23 THE COURT: Great. All right. Ms. Garman, is there
24 anything else?

25 MS. GARMAN: No, Your Honor.

1 THE COURT: Okay. Great. And Mr. Creizman?

2 MR. CREIZMAN: No, thank you, Your Honor.

3 THE COURT: All right. Thank you, everybody.

4 MR. SHAPIRO: Thank you, Your Honor.

5 MS. GARMAN: Thank you.

6

7

8 (Proceedings concluded at 2:40 p.m.)

9 I, CHRISTINE FIORE, Certified Electronic Court Reporter
10 and Transcriber and court-approved transcriber, certify that
11 the foregoing is a correct transcript from the official
12 electronic sound recording of the proceedings in the above-
13 entitled matter.

14

15



16

July 16, 2018

17

Christine Fiore, CERT

18

19

20

21

22

23

24